IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 739 of 1993

with

CRIMINAL APPEAL No 1067 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAUTAMBHAI DEVJIBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 739 of 1993
MR KJ SHETHNA for Petitioners
Ms.Harsha Devani, for Respondent No. 1

2. Criminal AppealNo 1067 of 1993
Ms.Harsha Devani for Petitioners
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 23/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. For causing the murder of (1) Gordhanbhai Keshubhai and (2) injuries to (a) Hirabhai Keshubhai, (b) Kanubhai Maganbhai, (c) Amratbhai Dahyabhai, (d) Hansaben w/o deceased Gordhanbhai Keshubhai, (e) Gangaben w/o Hirabhai Keshubhai and (f) Baluben w/o Manubhai Hirabhai, the appellants of Criminal Appeal No. 739 of 1993 were tried by the learned Addl.Sessions Judge, Ahmedabad, of the offences punishable under Sec. 302 read with Sec. 34, Sec. 324 read with 34 of Indian Penal Code and Sec. 135(1) of Bombay Police Act in Sessions Case no. 127 of 1989. The learned Addl. Sessions Judge has convicted the appellant no. 1 under Sec. 302 of I.P.C. as well as under Sec. 324 read with Sec. 34 of I.P.C. and sentenced him to suffer R.I. for life for the offence punishable under Sec. 302 of I.P.C. and R.I. for 2 years and pay fine of Rs.2,000/-, in default R.I. for six months for the offence punishable under Sec. 324 read with Sec. 34 of I.P.C. whereas the appellant nos. 2 to 4 are convicted under Sec. 324 of I.P.C. and sentenced to R.I. for 2 years and fine of Rs. 2,000/-, in default R.I. for six months vide judgment dated 30th June, 1993. Criminal Appeal no. 739 of 1993 which is filed by the appellants is directed against their conviction, whereas Criminal Appeal no. 1067 of 1993 is filed by the State Government questioning acquittal of appellant nos. 2 to 4, of the offences punishable under Sec. 302 read with Sec. 34 of I.P.C. As common questions of facts and law arise for our determination in these two appeals, we propose to dispose them of by this common judgment.

2. The complainant Hiralal Keshubhai was residing with his deceased brother Gordhanbhai and other family members at Vikramnagar Society, behind Hirabag, Ahmedabad. The complainant is a Labour Contractor by profession whereas the deceased was running a pan shop in the name and style of "Savan Pan Parlour" on Mahenatpura road, Nr. Amubhai chawl. All the convicted appellants are residing at Sukhipura Society and are brothers. The appellants entertained a suspicion that the complainant Hiralal was instrumental in initiation of extradition

proceedings against them and therefore they were on inimical terms with the complainant and had threatened the complainant with his life six months before filing of the complaint in the present case which was filed on 23rd October, 1987. On threats being administered by the convicted appellants, the complainant had lodged First Information Report with Ellisbridge police station also. The incident in question is alleged to have taken place on 23rd October, 1987. October 22, 1987 was Diwali day and because of the festival, the complainant along with his other members of the family was sitting in his house till late night. At about 1.00 a.m. on October 23, 1987, the complainant heard shouts of his brother Gordhanbhai for help from his pan shop and therefore the complainant immediately rushed towards the pan shop and found the appellant no. 1 with a Gupti in his hands and rest of the appellants with iron pipes in their hands. According to the complainant, the appellants were abusing the deceased in foul language and mounted assault on him. The complainant claims that appellant no. 1 gave a Gupti blow below the right armpit of Gordhanbhai as a result of which Gordhanbhai started running from pan shop towards his car which was parked just opposite his residential house and when the complainant tried to save the deceased, the appellant nos. 2 to 4 assaulted him by means of pipes. The prosecution has claimed that all the four appellants were speaking foul language and were assaulting Gordhanbhai by uttering words "beat beat". According to the prosecution, Amratbhai Dahyabhai, Kanubhai Maganbhai, Hansaben Gordhanbhai, Gangaben Hirabhai and Baluben also tried to save Gordhanbhai from the assault of these persons but they were also assaulted by appellants nos. 2 to 4 with pipes. As per the case of the prosecution, when the deceased reached near his car, he was assaulted by the appellants nos. 2 to 4 with pipes as a result of which the deceased fell down near his car. The case of the prosecution is that after assaulting Gordhabhai and others, the appellants ran away from the scene of offence with their weapons. Gordhanbhai was bleeding from his injury and had fallen down unconscious. The complainant had also, according to the prosecution, fallen down because of the assault on him with pipes. Amratbhai Dahyabhai and Kanubhai Maganbhai removed Gordhanbhai and complainant Hirabhai to V.S.hospital, Ahmedabad for treatment. At about 1.50 a.m., the doctor declared Gordhanbhai dead at the hospital. Dharmaji Bhimaji who was P.S.O. of Ellisbridge police station received Wardhi from V.S.Hospital on 23rd October, 1987 at 3.10 hrs. which was communicated to him on telephone by Jamadar Govindbhai who was on duty at V.S.Hospital. The Wardhi

indicated that one Gordhanbhai had died and that his assailants were Gautam Devjibhai etc. and that Govindbhai was declared dead at 1.50 a.m. whereas Hirabhai Keshubhai and Amratbhai Dahyabhai had sustained injuries. A copy of the wardhi was handed over to P.S.I.Mr.Goswami of Ellisbridge police station. P.S.I.Mr.Goswami, therefore went to V.S.hospital and recorded the complaint of Hirabhai, after which the crime was registered in the station dairy of Ellisbridge police station as C.R.No. 567/87. Thereafter, a report was made as required under Sec. 157 of the Code of Criminal Procedure and the papers were forwarded to the Police Inspector Mr. Ahuja for further investigation. It is also the case of the prosecution that on October 23, 1987, when P.S.I. Mr.N.H.Goswani was on duty in Investigation Squad of Ellisbridge police station, one Chandu Devji Rathod (appellant no. 3) had given N.C.Complaint at 2.40 hrs. which was recorded in the N.C.register and was forwarded to the P.S.I. for making entry in the station dairy which was registered in N.C.register as N.C.no. 468/87 and a yadi was given to Chandu Devji for treatment at V.S. hospital. According to the prosecution, when P.S.I. Mr.Goswami was at the hospital, he had held inquest on the dead body. Mr.Ahuja, P.I., Ellisbridge police station, after taking over the investigation of the crime from P.S.I. Mr.Goswami, recorded statements of witnesses and sent the dead body of deceased Gordhanbhai for post-mortem examination. At the conclusion of investigation, the appellants were chargesheeted for the offences punishable under secs. 302, 324 read with sec. 34 of I.P.C. As the offence punishable under sec. 302 of I.P.C. is exclusively triable by the Court of Sessions, the case was committed to Sessions Court, Ahmedabad for trial where it was numbered as Sessions Case no. 127 of 1989. The charge at exh. 2 under sec. 302 and 324 read with 34 of I.P.C. was framed by the learned Addl. Sessions Judge, Ahmedabad against the appellants. The charge was read over and explained to the appellants who pleaded not guilty to the same and claimed to be tried. Therefore, in all 19 witnesses were examined by the prosecution to prove its case against the appellants. They were 1) Complainant Hirabhai Keshubhai Vanol p.w.1 at exh. 16, 2) Dr.Chimanbhai B Charel p.w.2 at exh. 19, 3) Kanubhai Maganbhai Vanod p.w.3 at exh. 35, 4) Hansaben Gordhanbhai p.w.4 at exh.38, 5) Gangaben Hirabhai p.w.5 at exh.40, 6) Amratbhai Dahyabhai p.w.6 at exh.52, 7) Manubhai Tulsibhai p.w. 7 at exh.54, 8)Vastabhai Chhanabhai Gohil p.w.8 at exh.56, 9) Ashok Harshadrai Acharya p.w. 9 at exh.60, 10) Ramesh Bhalaji p.w.10 at exh.61, 11) Hirabhai Gandabhai p.w.11 at exh.64,

12)Dharmaji Bhikhaji p.w.12 at exh.69, 13) Dr.Ravindra S Bhinse p.w.13 at exh.78, 14) Ramchandra Chatrabhuj p.w. 14 at exh. 81, 15) Govindlal Somchandbhai p.w.15 at exh. 83, 16)Mohd.Salim Maqbulkhan p.w.16 at exh.87, 17) Narendrapuri H Goswami p.w.17 at exh.88, 18)Gyansagar Girdharji Ahuja p.w. 18 at exh.91, 19) Ratilal Bechardas Soni p.w.19 at exh.99. The prosecution also produced documentary evidence such as complaint filed by Hirabhai at exh. 17, certificate of injuries of 1) Gangaben, 2) Kanubhai Maganbhai, 3) Amratbhai Dahyabhai, 4) Hirabhai Keshubhai, 5) Hansaben Gordhanbhai etc., wardhi given by Constable Govind Somchand to P.S.O. Dharmaji Bhimaji of Ellisbridge police station, post-mortem notes of the deceased etc. to prove its case against the appellants. On appreciation of the evidence adduced by the prosecution, the learned Addl.Sessions Judge, by judgment dated June 30, 1993 has held that it was proved beyond reasonable doubt by the prosecution that the deceased Gordhanbhai died a homicidal death. The learned Judge deduced that on October, 23, 1987 at 01.00 hrs., the appellants were equipped with weapons like gupti and pipes on Mahenatpura road, near Chinubhai chawl in Ambawadi area of city of Ahmedabad and the appellant no. 1 had caused death of Gordhanbhai by inflicting injury with gupti whereas the appellants no. 2 to 4 had caused injuries to witnesses who had tried to save Gordhanbhai from assault. According to the learned Judge, the appellant no. 1 had inflicted gupti blow with an intention to cause death of the deceased and therefore he had committed the offence punishable under Sec. 302 of I.P.C. and was also guilty of the offence punishable under Sec. 324 read with Sec. 34 of I.P.C., whereas the appellants no. 2, 3 & 4 had intentionally caused injuries to witnesses Hirabhai Keshubhai, Kanubhai Maganbhai, Amratbhai Dahyabhai, Hansaben and Baluben with iron pipes and they had committed offence punishable under Sec. 324 read with Sec. 34 of I.P.C. The learned Judge was of the view that the appellants no. 2 to 4 had not shared common intention of appellant no. 1 to kill deceased Gordhanbhai and therefore they were not liable to be convicted under Sec. 302 of I.P.C. read with Sec. 34 of I.P.C. The learned Judge, thereafter, heard the appellants regarding sentence to be imposed on them and after hearing them, has sentenced the appellant no. 1 to suffer R.I. for life under Sec. 302 of I.P.C. as well as R.I. for 2 years and fine of Rs.2,000, in default R.I. for six months under Sec. 324 of I.P.C. read with Sec. 34 of I.P.C. The appellants no. 2 to 4 are sentenced by the learned Judge to R.I. for 2 years and fine of Rs. 2,000/each, in default R.I. for six months by the impugned judgment, which has given rise to

Criminal Appeal no. 739 of 1993. According to the State, the appellants no. 2 to 4 ought to have been convicted under Sec. 302 of I.P.C. with the help of Sec. 34 of I.P.C. as they had shared common intention of the appellant no. 1 to kill Gordhanbhai and therefore the State Government has preferred Criminal Appeal no. 1067 of 1993 under sec. 378 of the Code of Criminal Procedure.

3. Mr.K.J.Sethna, learned Counsel for the convicted appellants, after taking us through the entire evidence on record, submitted that the evidence of complainant Hirabhai is not only unnatural but full of material contradictions as well as omissions and therefore his evidence should not have been believed by the learned Judge for convicting the appellants. According to the learned Counsel for the appellants, the evidence led by the prosecution does not establish satisfactorily that the incident had taken place at pan shop of the deceased and therefore the genesis of the incident having been suppressed by the prosecution, the whole prosecution case ought to have been disbelieved by the learned Judge. It was urged that giving latitude to the prosecution witnesses on the ground that they were deposing before the court after a lapse of about 5 years from the date of incident is not justified at all and as the prosecution witnesses had not seen the incident in question at all but were got up subsequently, the appeal should be accepted. The learned Counsel for the appellants pointed out contradictions and discrepancies appearing in the deposition of prosecution witnesses and submitted that the prosecution witnesses were lying before the court and should not have been believed by the learned Judge at all. According to the learned Counsel, at the place of incident, several persons had gathered and therefore in the absence of any corroboration by independent witnesses to the testimony of witness Kanubhai, the prosecution case against the appellants should be disbelieved. The learned Counsel emphasized that before the doctor, three witnesses had stated that the incident had taken place at 11 p.m. whereas before the court, the prosecution witnesses maintained that the incident had taken place at about 1 a.m. which means that the prosecution has suppressed the material facts and therefore the prosecution case against the appellants ought to have been rejected by the learned Judge. What was claimed was that there was unexplained delay in the disclosure of the names of the assailants and as the the complaint was prepared after holding of inquest on the dead body, the appellants deserve to be acquitted. After referring to the evidence of the complainant and P.S.I. Mr.Goswami,

the learned Counsel contended that the first information report is a dubious document and therefore could not have been relied upon by the learned Judge for seeking corroboration to the testimony of the complainant. The learned counsel for the appellants pointed out interpolation of the words in wardhi exh. 84 and submitted that case against the appellant no. 1 was cooked up by the prosecution later on which does not inspire confidence at all. The learned Counsel criticized the approach of the learned Addl. Sessions Judge in evaluating the interpolation of the words in exh. 84 in the light of contemporary record and submitted that the got up case against the appellants should not have been believed by the learned Judge. What was pleaded was that even if it was assumed that the offence was committed at 1.25 a.m., the distance between the place of incident and the V.S.hospital is short one, and as record was manipulated and concocted to implicate more persons than one, the appeal deserves to be allowed. According to the learned Counsel, the N.C. complaint of appellant no. 3 Chandubhai Devjibhai should not have been taken into consideration while deciding the question as to at what time the incident had taken place and finding regarding time of the incident being erroneous should be set aside. The learned Counsel, lastly stressed that the learned Addl.Sessions Judge has totally misread the evidence on record and the appellants should be acquitted. With reference to the acquittal appeal filed by the State Government, the learned Counsel for the appellants claimed that no reliable evidence worth named is adduced by the prosecution to establish that the appellants no. 2 to 4 had shared the intention of the appellant no. 1 to kill deceased Gordhanbhai and the acquittal appeal being substance less, should be dismissed.

4. Ms. Harsha Devani, learned A.P.P. contended that the fact that witnesses were injured in the incident is amply proved by their testimonies which is supported by medical evidence and therefore the presence of injured witnesses at the place of incident can hardly be doubted. According to the learned Counsel for the State, the incident in question was witnessed not only by injured complainant Hirabhai but also by injured Kanubhai as well as Hansaben, Gangaben etc. and therefore the learned Judge did not commit any error in convicting the appellant no. 1 under Sec. 302 as well Sec. 324 read with Sec. 34 of I.P.C. and appellants no. 2 to 4 under Sec. 324 I.P.C. The learned Counsel emphasized that the contradictions and omissions appearing in the evidence of complainant Hirabhai are not material so as to discredit

his whole testimony and therefore that part of his evidence which is corroborated by the evidence of other independent witnesses on record should be accepted by the court. After reading the evidence of witness Kanubhai, learned Counsel claimed that prosecution case against appellant no. 1 that he inflicted blow on the deceased with gupti and that appellants no. 2 to 4 caused injuries to witnesses is amply proved and therefore the conviction of the appellants should be upheld. The learned Counsel referred to the inquest report in detail and pointed out that before holding inquest, the complaint was already reduced in writing and sent for registration to the Ellisbridge police station and therefore it was not correct to contend that the complaint was recorded after holding the inquest on dead body. According to the learned Public Prosecutor, the case against the convicted appellants is proved by reliable and trustworthy evidence of injured witnesses and therefore non-examination of so called independent witnesses does not affect the prosecution case at all. The learned Counsel referred to wardhi exh. 84 as well as other relevant documents on record and pleaded that the correction made in exh. 84 does not indicate in any manner that any case was cooked up against any of the appellants by the prosecution. What was maintained by the learned Counsel for the State was that the prosecution has satisfactorily proved that the appellant no. 1 had caused death of deceased Gordhanbhai by inflicting blow with gupti whereas rest of the appellants had injured others who are examined by the prosecution and as the appellants no. 2 to 4 had also shared common intention of appellant no. 1 to kill Gordhanbhai, the conviction appeal filed by the appellants should be dismissed and acquittal appeal filed by the State Government should be accepted.

5. We have taken into consideration the submissions advanced at the bar and re-appreciated the whole evidence on record.

6. Before considering the prosecution evidence and its effect, it would be instructive to notice salutary principles of law governing appreciation of evidence in a criminal case. In State of U.P. V/S Anil Singh AIR 1988 S.C. 1998, the Supreme Court has observed as under : "In the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. The indifferent attitude of

the public in the investigation of crimes could also be pointed. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on ground that all witnesses to occurrence have not been examined. It is also not proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. It is also experienced that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies of falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform." Again in State of H.P. V/S Lekh Raj and another (2000)1 S.C.C. 247, the Supreme Court has made following pertinent observation : "The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal

jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind."

7. Having noticed the principles relating to appreciation of evidence as laid down by the Supreme court, we will now consider the evidence on record and its effect. The fact that deceased Gordhanbhai died a homicidal death is not in dispute. This fact is amply proved by the evidence of Dr.Ravindra S Bhinse, p.w.no. 13 exh. 78 who has produced the P.M. notes prepared by Dr.Zhala after performing autopsy on the dead body. According to Dr.Bhinse, the cause of death of deceased was shock and haemorrhage following injury on vital organs like liver. The p.m. notes indicate that there was a tear in liver 1cm x 0.5cm. Further, 1cm cut over right anterosuperior surface and blood clots were also found present over liver. It also indicates that an abrasion of 3cm x 2cm over left cheek bone which was dark brown in colour was also noticed and a transverse linear abrasion 9 cm in length over lower left abdomical wall, 6 cm left anterior superior iliac was found. Further, bruise of 3cm x 2cm over inner aspect of the right thigh was also noticed. The injuries sustained by the deceased are also mentioned in detail in the inquest report which stands proved through the evidence of P.S.I.Mr.Goswami, Complainant Hirabhai, eye witness Kanubhai and others have also stated that deceased was assaulted by means of gupti. On over all view of the matter, we are satisfied that the learned Addl.Sessions Judge was justified in concluding that deceased died a homicidal death. The said finding being just and borne out from evidence on record, is hereby upheld.

8. Coming to the incident in question, we find that witness Hirabhai has claimed in his evidence that October 22,1987 was Diwali day and he, his wife and wife of deceased Gordhanbhai were awake and on hearing shouts of Gordhanbhai for help, he had gone out of his house and found the appellant no. 1 inflicting gupti blow below the right armpit. The witness has also claimed that he himself, witness Kanubhai, witness Amratbhai and others had tried to save deceased Gordhanbhai from assault but they were all assaulted by appellants nos. 2 to 4. According to this witness, though deceased Gordhanbhai was assaulted, he could manage to get up and reach near the place where his fiat car was lying but the appellant

nos. 2 to 4 had knocked him down by assaulting with pipe blows. In his cross-examination, this witness was confronted with his police statement. The witness admitted that it was not recorded in his statement that at about 1.00 to 1.15 a.m., his wife, wife of the deceased Gordhanbhai and he himself were awake. The witness admitted that it was not recorded in his further statement that his wife, wife of deceased Gordhanbhai were at the house along with him. What is important is that this witness had stated in his police statement that the fact that appellant no. 1 had given gupti blow to the deceased was mentioned by him on information received from witness Kanubhai and witness Amratbhai. The witness admitted that it was not recorded in his complaint that deceased Gordhanbhai had started running towards his house from the galla for the purpose of escaping from the assault which was mounted by the appellants. He also admitted that it was not recorded in his complaint that appellant nos. 2 to 4 were following him and that deceased Gordhanbhai, on receipt of injury, had fallen down and had got up and reached the place where the fiat car was lying. The witness also admitted that it was not recorded in his complaint that at the time when the deceased Gordhanbhai was being assaulted, wife of deceased Gordhanbhai and his niece Baluben had tried to save the deceased. The omissions appearing in the evidence of this witness have been enumerated in detail by the learned Addl.Sessions Judge in paragraphs 18 & 19 of the judgment. In view of the contradictions and material omissions which are apparent from the deposition of this witness, we are of the opinion that it is not safe to rely upon testimony of this witness for the purpose of prosecution case that this witness had seen the gupti blow being inflicted by the appellant no. 1 to the deceased. However, we notice that in the case of Narayan Chetanram Chaudhary and another V/S State of Maharashtra reported (2000) 8 S.C.C. page 457, the Supreme Court, while explaining the law relating to appreciation of evidence of a witness, has ruled that contradictions in material particulars cannot be a ground to discredit whole of testimony of a witness. The evidence on record, more particularly, the testimony of complainant Hirabhai would show that he had received the injuries in the incident. His case that he was injured in the incident is corroborated by the evidence of Dr.Chimanbhai Charel, p.w.no. 2 exh. 19 who had treated him. The injury certificate of witness Hirabhai Keshubhai produced at exh. 23 shows that he was brought to V.S.hospital at 2.00 a.m. on October 23, 1987 followed by yadi from Ellisbridge police station and on examining Dr.Charel had found abrasion on knee 1cm x 5cm

and inside on left thigh measuring 5cm x 4cm. Abrasion on right side of the cheek 1cm x 1cm was also found and multiple contusions on back of chest were also found. The medical certificate is further corroborated by medical papers relating to treatment given to witness Hirabhai, produced at exh. 26 on the record of the case. Witness Kanubhai Maganbhai p.w.no. 3 exh. 35, has also stated in his evidence that appellant nos. 2 to 4 had assaulted complainant Hirabhai with iron pipes and that Hirabhai was injured. Though witness Kanubhai was cross-examined at length, nothing could be elicited to doubt his version in his examination-in-chief that appellant nos. 2 to 4 had assaulted complainant Hirabhai with iron pipes. Thus, there is no reason as to why the testimony of complainant Hirabhai should not be believed regarding injuries to him by appellant nos. 2 to 4 when his evidence stands corroborated by not only medical evidence but also by evidence of Kanubhai Vanod who was also injured in the incident. On over all view of the matter, we are satisfied that the prosecution has proved through the testimony of complainant Hirabhai that he was assaulted by appellant nos. 2 to 4 on the date of incident by iron pipes and had sustained injuries as mentioned in injury certificate exh. 23.

9. Coming to the main incident regarding murder of deceased Gordhanbhai, we find that witness Kanubhai Maganbhai, p.w.no. 3, exh. 35 has clearly stated in his deposition before the court that on the night of Diwali of 1987, he was chitchatting till late at night and as he wanted to eat a pan, he had gone to Savan Pan Parlour of the deceased. According to him, he saw that at the pan house, the deceased and Amratbhai were present and time was about 1.00 to 1.15 a.m. The witness has stated before the court that after taking pan, while he was standing on the right side of pan galla, Gautam Devjibhai i.e. the appellant no. 1 as well as other appellants were seen coming from Mahenatpura side and appellant no. 1 had a gupti in his hand whereas other 3 appellants were armed with pipes. Further, according to him, appellant no. 1 had asked the deceased to get down from the pan house and while deceased was coming down, the appellant no. 1 had inflicted a gupti blow on his right padkha (below the armpit) and therefore the deceased had immediately pressed his hand on the injury and started shouting for help and ran towards his house. According to witness Kanubhai, he and Amratbhai had followed deceased Gordhanbhai but appellant nos. 3 & 4 together had assaulted Amratbhai and him with pipes and knocked down Amratbhai. According to Kanubhai, at that time,

complainant Hirabhai was seen coming from the opposite direction but appellant nos. 2 to 4 had also assaulted Hirabhai with pipes and knocked him down and thereafter all the 4 appellants had chased deceased Gordhanbhai. The witness has specifically maintained before the court that appellant no. 1, with gupti in his hand, was exhorting the other three appellants to kill the deceased and therefore the appellant nos. 2 to 4 had assaulted the deceased near fiat car where he had ultimately fallen down. The witness has stated before the court that because of great clamour, the appellants had run away from the place of incident and he had removed deceased Gordhanbhai, Amratbhai and complainant Hirabhai to V.S.hospital in rickshaw for treatment.

In his cross-examination, the witness explained that the act of inflicting injury with gupti by appellant no. 1 occurred within 5 to 10 minutes after he had gone to pan galla. He also maintained during his cross-examination that he had seen the appellants with weapons from a distance of 7-8 ft. He has admitted that he could not realize that the appellants were coming forward for an attack on the deceased. He also explained during his cross-examination that neither he nor Amratbhai nor deceased had any weapon at the time when deceased was assaulted by appellant no. 1. The witness denied the suggestion made to him that it was not true that he did not intervene when deceased Gordhanbhai was injured with gupti. According to this witness, before he could intervene, Gordhanbhai was already injured with gupti and therefore he could not do anything in the matter. In his cross-examination also, the witness specifically maintained that the appellant nos. 2 to 4 had assaulted him and the deceased after gupti injury was inflicted on the deceased. The witness admitted that when deceased Gordhanbhai was injured with gupti, the appellant nos. 2 to 4 had hidden themselves behind galla and that on hearing cries of the deceased, complainant Hirabhai had come to the galla from his house whereupon he was assaulted by appellant nos. 2 to 4. The witness could not say as to what was the distance between him and Hirabhai at the time when the deceased was assaulted but stated that the deceased was roughly at a distance of 5 to 7 ft. from him. The witness could not remember whether he had asked the appellants to resist from beating after he was injured and he admitted that he did not make any effort to rescue Hirabhai at the time when he was assaulted. On re-appreciation of evidence of witness Kanubhai Maganbhai, we find he had seen the entire incident from the beginning to end. Though certain discrepancies and contradictions have come to light during his cross-examination, we are of the opinion

that the discrepancies and contradictions are not so serious so as to totally discredit the witness and brand him as a liar. The witness has remained unruffled in his cross-examination on his version regarding the incident as stated by him in his examination-in-chief. It is relevant to notice that this witness was injured and was treated by Dr.Chimanbhai. The injury certificate of this witness produced at exh. 21 indicates that he was examined by the doctor at V.S.hospital at 8.30 a.m. on October 23, 1987 followed by yadi from Ellisbridge police station. On examination, the doctor had found abrasion on the left hand 1.5 x 0.5cm. The witness being injured, his presence at the time and place of incident can hardly be doubted. The witness has not made any exaggerations in his testimony recorded before the court. The claim made by this witness that while deceased Gordhanbhai was about to step down from the galla, at that very time the appellant no. 1 had inflicted gupti blow below his armpit whereupon the deceased had pressed his hand on his injury and cried for help and also run towards his house remains trustworthy all throughout and on the important aspect of the occurrence of the crime, hardly anything has emerged during his cross-examination which would belie the correctness thereof. The only fact which has emerged in his cross-examination is that he did not get it recorded in his police statement that Gordhanbhai had pressed his hand over his injury and that when appellant no. 1 came forward, the rest of the appellants were hiding themselves behind the galla. This discrepancy, in our opinion, does not give any cause to disbelieve that it was the appellant no. 1 who had inflicted the injury with gupti on the deceased. The contention that testimony of solitary eye witness Kanubhai should not be believed for upholding conviction of the appellants is devoid of merits. There is no impediment in law in a conviction being based upon the testimony of a single witness provided the court comes to the conclusion that his evidence is honest and trustworthy. It is not the number of witnesses examined nor the quantity of evidence adduced by the prosecution that counts. It is the quality that counts. Section 134 of the Evidence Act lays down in clear terms that no particular number of witnesses is necessary for proof of a fact. The section follows the maxim that evidence is to be weighed and not counted. Law does not require a plurality of witnesses and a conviction can undoubtedly be based on the testimony of a single witness provided that the evidence of that witness is trustworthy. As observed earlier, witness Kanubhai had received injury during the course of occurrence and therefore his evidence has great evidentiary value. Even if prudence requires that some

corroboration should be sought from the other prosecution evidence, we find that he is corroborated regarding his presence at the time of the occurrence by testimony of injured witnesses. In our view, therefore, the deposition on oath of witness Kanubhai goes a long way in establishing the prosecution case that deceased Gordhanbhai was injured with gupti by appellant no. 1 at his pan shop. We notice that the prosecution had also examined Amratbhai Dahyabhai p.w.no. 6 exh. 52 to prove its case that the appellant no. 1 had inflicted gupti blow on the deceased. However, a bare reading of the testimony of this witness makes it clear that he did not support the prosecution and therefore was cross-examined by the learned A.P.P. after obtaining permission from the court. However, examination-in-chief of this witness who turned hostile makes it evident that the deceased was assaulted at pan shop and had fallen down on the road opposite pan shop. After treating him as hostile to the prosecution, this witness was confronted with his earlier police statement by learned A.P.P. and the contradictions are duly proved. It is well settled that contradictions proved cannot be pressed into service by the prosecution for the purpose of bringing home guilt to the accused and evidence of this witness is of no help to the prosecution.

10. So far as second part of the incident namely assault on the deceased by the appellants no. 2 to 4 with pipes at the behest of the appellant no. 1 near the car of the deceased and injuries to Gangaben, witness Hansaben and witness Baluben is concerned, we find that witness Gangaben in her deposition recorded at exh. 40 has clearly stated that while she had tried to save the deceased from assault of the appellants, she was injured by appellants no. 2 to 4. This witness was also treated by Dr.Chimanbhai at V.S.hospital. The injury certificate relating to injuries of Gangaben produced at exh. 20 would show that she was brought to V.S.hospital at 7.40 a.m. on October 23, 1987 with police yadi from Ellisbridge police station and on examination, the doctor had found tenderness in right side of the lower ribs. The doctor in his cross-examination, has categorically stated that the tenderness felt by injured Gangaben was genuine though no swelling noticed. The evidence of witness Gangaben would also indicate that on hearing shouts of Gordhanbhai at the pan shop, her husband i.e. complainant Hirabhai had run towards the pan shop and she had also followed him. According to her, when witness Hansaben tried to save the deceased, she was pushed aside by witness Kanubhai who was assaulted by appellants no. 2 to 4. According to her, the appellants no. 2 to 4

were the persons who had assaulted the deceased Gordhanbhai with pipes near his car. What is claimed by this witness is that all the four ladies who were assaulted with pipes had sustained injuries and because of the clamour raised by them, large number of people had gathered at that place and therefore the four appellants had run away from the place of incident with their weapons. In her cross-examination, the witness admitted that Savan pan parlour was situated at a distance of about 25 ft. from her house, but they had not tried to look through the window at the pan shop on hearing the cries of the deceased. During her cross-examination, this witness stated that witness Kanubhai was lying on deceased Gordhanbhai in an attempt to save him when he was assaulted with pipes. She denied the suggestion that Kanubhai did not make any effort to save Gordhanbhai. On re-appreciation of the evidence of witness Gangaben, we find that she is a witness of truth and her presence at the place of incident is most natural. She herself was injured in the incident and therefore her version that she and others were assaulted by appellant nos. 2 to 4 with iron pipes deserves acceptance, more particularly in absence of any major contradictions in her deposition.

11. So also witness Hansaben exh. 38 has stated in her evidence that on hearing cries of deceased Gordhanbhai, she had gone to the pan shop and on attempt being made by her to save the deceased from assault mounted by the appellants she had sustained injuries, at the hands of appellant nos. 2 to 4. Her evidence is also amply corroborated by her injury certificate which is produced on the record of the case at exh. 24. Exh. 24 would indicate that Hansaben Gordhanbhai was brought to V.S.hospital at 7.30 a.m. on October 23, 1987 followed by police yadi from Ellisbridge police station and on her examination, the doctor had found contusion on back of right chest as well as contusion on back region of right lumber. This witness was also cross-examined at length but nothing could be elicited during her cross-examination to create a doubt about the claim made by the witness in her examination-in-chief. The witness being injured, her presence at the place of incident can hardly be doubted. As such it is not suggested that she is on inimical terms with any of the appellants. There is no reason why this witness should involve the appellants in a false case. Thus, the evidence of this witness also establishes beyond reasonable doubt that the appellants had assaulted deceased and while trying to save the deceased, the witness had received injuries at the hands of appellant nos. 2 to 4.

12. The net result of the above discussion is that the evidence of witness Kanubhai clearly establishes that the appellant no. 1 inflicted gupti blow on the deceased while deceased was trying to come down from the pan shop and evidence of witness Kanubhai, witness Hansaben and witness Gangaben clearly establishes that the appellant nos. 2 to 4 had assaulted them with iron pipes while they had made an attempt to save deceased Gordhanbhai from assault of the appellants.

13. The contention that the prosecution has not examined independent witnesses to prove its case against the appellants and therefore the case of the prosecution should be disbelieved is devoid of merits. In case of Ramiah Asari V/S State of Tamil Nadu A.I.R. 1977 S.C. 2102, an argument was advanced that there were other neighbours who are not examined by the prosecution and therefore the prosecution case should be disbelieved. Negativing the said contention, the Supreme Court has ruled that non-examination of other neighbours by itself is no ground to discredit the prosecution case. Again while dealing with plea relating to non-examination of some eye witnesses by prosecution, the Supreme court in Palsingh and others V/S State of U.P. AIR 1979 S.C. 1116 has held that non-examination of some eye witnesses by prosecution can hardly be ground to draw adverse inference. According to the Supreme Court, in such cases the question which has to be determined is not whether the absence of examination of the independent witnesses would vitiate the prosecution case by itself but whether the evidence actually produced is reliable or not. What is emphasized by the Supreme Court therein is that once the court comes to a finding of fact that the evidence led by the prosecution is reliable and trustworthy, the infirmities arising out of the non-examination of witnesses would not be sufficient to put the prosecution out of court. Applying the principles laid down by the Supreme Court in the above referred two decisions to the facts of the present case, we find that the evidence of witness Kanubhai and other injured witnesses is reliable as well as trustworthy. No infirmities in their evidence have been brought on record which would discredit their testimony. Under the circumstances, we are of the opinion that the infirmities, if at all, arising out of non-examination of independent witnesses cannot be treated as sufficient to put the prosecution out of court.

14. The contention that the incident in question had taken place at 11.00 p.m. on October 22, 1987 and not at about 1.00 a.m. of October, 23, 1987 and therefore the

prosecution case should be disbelieved has no merits. We may state that witness Hirabhai Keshubhai p.w. 1 exh. 16, witness Kanubhai Maganbhai p.w. 3 exh. 35, witness Hansaben Gordhanbhai p.w. 4 exh. 38, as well as witness Gangaben p.w. 5 exh. 40 have firmly and categorically stated in their sworn testimonies that the incident in question had taken place at about 1.00 a.m. on October 23, 1987. It is true that in medical papers relating to complainant Hirabhai, witness Amratbhai and deceased Gordhanbhai, it is mentioned by Dr.Charel that as per the history given by Hirabhai and witness Amratbhai, the incident had taken place at about 11.00 p.m. However, we notice that in injury certificate of witnesses which were handed over to the investigating officer during investigation, it is not mentioned by Dr.Charel that the witnesses had stated that the incident in question had taken place at 11 p.m. The medical evidence on record unerringly establishes that on admission the deceased was declared dead at about 1.50 a.m. on October 23, 1987. If the incident had taken place at 11.00 p.m. as alleged by the defence, there was no reason for the witnesses Kanubhai and others to bring the deceased to V.S.hospital at about 1.50 a.m. We may state that in Wardhi exh. 84, the time of occurrence is stated to be 1.25 a.m.. In the complaint exh. 17 also, the time of occurrence is stated to be 1.25 a.m. In report exh. 72 made by P.S.I.Mr.Goswami the time of occurrence is stated to be 1.25 a.m.. So also, in the entry exh. 73 made in the station dairy maintained at Ellisbridge police station the time of occurrence is mentioned to be 1.25 a.m. Though Dr.Charel p.w. 2 maintained before the court that he had stated the time of occurrence as 11 p.m., on information conveyed by witness Hirabhai and Amratbhai, he admitted that in case of injured Kanubhai, injured Hansaben, injured Gangaben and injured Baluben, he had not stated any time of occurrence. It is relevant to notice that witness Dr.Charel gave deposition after going through the papers and did not state a single fact on the basis of his memory. Further, it is pertinent to note that appellant no. 3 Chandu Devji appeared at Ellisbridge police station at 2.40 a.m. on October 23, 1987 and lodged N.C.complaint as is evident from the oral testimony of P.S.I.Mr.Goswami. After forwarding the same to the P.S.O. for recording it in the station dairy, the appellant no. 3 was sent to V.S.hospital along with the police yadi for treatment. The complaint given by appellant no. 3 which was recorded in the N.C.register as N.C. no. 468/87 was registered against deceased Gordhanbhai for the offences punishable under Sec. 323, 504, 511 of I.P.C.. In the said complaint, the time of occurrence is stated to be 1.00 a.m. on October 23,

1987. This complaint which is produced at exh. 89 is to the effect that injured appellant no. 3 was assaulted by deceased and complainant Hirabhai at pan galla near Ambedkar colony at about 1.00 a.m. This piece of evidence gives us strong reason to believe that the incident in question must have occurred around 1.00 a.m. or thereabout on October 23, 1987 and not at 11.00 p.m. on October 22, 1987 as is recorded in medical papers. On totality of the facts and circumstances of the case, we are satisfied that the prosecution has adduced reliable evidence to establish that the incident in question had taken place at 1.00 a.m. and the prosecution case does not stand vitiated as is claimed by the learned counsel for the appellants on the ground that the incident as indicated in the medical papers had taken place at 11.00 p.m. on October 22, 1987.

15. The contention that there was interpolation in wardhi exh. 84 and therefore the prosecution case stands vitiated has also no substance. The evidence of P.S.I.Mr.Goswami p.w.17 exh. 88 shows that first of all, he had recorded N.C. complaint of appellant no. 3 at 2.40 a.m. on October 23, 1987 wherein the time of incident is mentioned to be 1.00 a.m. near galla. According to this witness, at 3.10 a.m., Govindbhai who was the Head Constable on duty at V.S.hospital had given Wardhi about injury to complainant Hirabhai and death of deceased Gordhanbhai at the instance of Dr.Charel. The said wardhi is produced at exh. 71. This witness Goswami has stated that the wardhi received was also noted in the crime register and he has produced the entry made in the crime register at exh. 74. According to this witness, on wardhi being handed over to him, he had gone to V.S.hospital and recorded F.I.R. of complainant Hirabhai. The evidence of witness Govindhbai would indicate that first of all wardhi exh. 84 was given at 3.10 a.m. and thereafter he had made an entry regarding complaint of appellant no. 3 which is at exh. 85, after which entry in the register about injured Kanubhai was made at exh. 86. The evidence of witness Dharmaji Bhimaji would show that he had written down wardhi exh. 70 as stated by Govindbhai who was Head Constable on duty at the V.S.Hospital. This witness has clearly mentioned in his deposition that he had handed over the copy of that wardhi to P.S.I.Mr.Goswami. As observed earlier, the evidence of witness Goswami makes it manifest that after going to V.S.hospital, he had recorded first of all the F.I.R. as stated by complainant Hirabhai and made report to P.S.O., Ellisbridge police station which is produced on the record of the case at exh. 90. Witness Dharmaji Bhimaji has also stated in his evidence that he

had received complaint recorded by Goswami at 4.00 a.m. on October, 23, 1987. On perusal of Wardhi exh. 84, we find that the same was recorded at 3.10 a.m. and was communicated to the P.S.O. at Ellisbridge police station at about the same time. This fact has not been challenged or controverted in cross-examination of witness Govind Somchand p.w.15. When we look at the wardhi exh. 70 recorded by Dharmaji Bhimaji at Ellisbridge police station, we find that it contains additions and alterations in regular manner without any additions and alterations as made in wardhi exh. 84 recorded by p.w. 15 Govind Somchand. From this verification of exh. 84 recorded at V.S.Hospital with subsequent wardhi as communicated by Govindbhai to Dharmaji Bhimaji at Ellisbridge police station, we find that there is no time lag between the two which would give rise to a definite cause to believe that the additions and alterations appearing in wardhi exh. 84 were made subsequently. If that had been so, they would not have found place in exh. 70 in regular manner. Therefore, in our view, the alterations and additions in exh. 84 does not affect the prosecution case at all in any manner and it is difficult to agree with the argument advanced on behalf of the appellants that the case was concocted subsequently against the appellant no. 1 and others falsely.

16. The contention that there was delay in disclosure of names of the appellants and therefore serious doubt about the truthfulness of the prosecution case arise has also no merits. The time of occurrence is an important factor in the prosecution case and on re-appreciation of evidence, we have held that the incident had taken place at about 1.25 a.m. during the night between Diwali and New Year Day. The names and addresses of all the four appellants are disclosed in complaint exh. 17. It is true that the time at which the complaint was recorded has not been mentioned in the complaint itself. However, P.S.I. Mr.Goswami, whose evidence is recorded at exh. 88 has clearly stated that the complaint was recorded at 3.10 a.m., after he had gone to V.S.hospital. As observed earlier, the complaint recorded by P.S.I. Mr.Goswami was forwarded to the Ellisbridge police station along with report exh. 90 for registering the crime, after which the inquest panchanama was held on the dead body of the deceased Gordhanbhai. Thus, the evidence of P.S.I. Goswami unerringly establishes that the wardhi was earlier in point of time than the complaint exh. 17. As discussed earlier, wardhi is on record of the case at exh. 84. In the said wardhi, it is clearly mentioned that the appellant no. 1 and others

had assaulted the deceased by means of sharp cutting instruments and caused injury to Hirabhai. Further in complaint exh. 17 which is promptly lodged after the occurrence, all the particulars including the names of the appellants are mentioned. In our view, there is no delay in disclosure of names of the appellants and appellants are not entitled to any benefit of doubt on this ground.

17. The contention that the first information report was recorded after holding of inquest and therefore the whole prosecution case stands vitiated is substanceless. P.S.I. Mr.Goswami has clearly stated that on receipt of wardhi, he had gone to V.S.hospital and had first recorded the complaint of Hirabhai and had thereafter held inquest on the dead body. Though this witness has been searchingly cross-examined, it could not be brought on record that his version about the holding of inquest after recording of complaint was false. The learned A.P.P. has read out the original inquest report. and in the said report also, the fact that P.S.I.Mr.Goswami had recorded the complaint is mentioned. The only thing which was done by Mr.Goswami was that after recording the complaint, he had forwarded the same to Ellisbridge police station for registration at exh. 90 and without waiting for crime register number, he had held the inquest on the dead body. That is how the crime register number is not mentioned in the inquest report. However, the fact remains that the inquest was held after recording of the complaint and it is not correct to say that on the basis of inquest report, the complaint was recorded which vitiates the prosecution case.

18. Though the learned Counsel for the appellants has not argued the point that non-examination of the doctor who had performed post-mortem notes, makes the post-mortem notes inadmissible in evidence, we have examined the said point. From the evidence of Dr.Ravindra p.w.no. 13 exh. 78, we find that he himself had not carried out the post-mortem, but the post-mortem was carried out by Dr.Zhala in V.S.hospital on October 23, 1987 at 8.05 a.m. At the time when evidence was being recorded, Dr.Zhala had gone abroad and therefore it had become necessary to examine Dr.Bhinse who had been doing the work of post-mortem examinations since 10 years. From the evidence of Dr.Bhinse, it is evident that the presence of Dr.Zhala could not have been procured without an amount of delay or unreasonable expenses and therefore the statements made by him in the nature of post-mortem report were admissible in evidence in view of the provisions of Sec. 32 of the Evidence

Act. Since Dr.Zhala who had conducted the post-mortem report had gone abroad, it would not have been possible to procure his attendance in the court without an amount of delay or unreasonable expenses. Under the circumstances, we are of the opinion that the post-mortem notes prepared by Dr.Zhala are proved as required by law through the evidence of Dr.Bhinse and rightly taken into consideration by the learned Judge.

19. The result of the above discussion is that it is proved by the prosecution that the appellant no. 1 had caused death of deceased Gordhanbhai by inflicting gupti blow below the right armpit and he had also exhorted the appellant nos. 2 to 4 to assault the deceased. It is also proved beyond reasonable doubt that the appellant nos. 2 to 4 had caused injuries to complainant Hirabhai, witness Kanubhai, witness Hansaben and witness Gangaben by means of iron pipes. Under the circumstances, the conviction of the appellant no. 1 under Sec. 302 as well as under Sec. 324 read with 34 of I.P.C. is eminently just and is hereby upheld. So also the conviction of appellants no. 2 to 4 under Sec. 324 of I.P.C., being in consonance with evidence on record is hereby upheld.

20. The alternative contention that there was a free fight between the deceased and prosecution witness on one side and the appellants on the other wherein the appellant no. 1 had given one gupti blow without taking undue advantage and therefore it should be held that he is guilty of lesser offence punishable under part 1 of Sec. 304 of I.P.C. has no substance. The record of the case does not show that any assault was made by the deceased on any of the appellants. Such a suggestion is not offered during the cross-examination of any of the prosecution witnesses. It is relevant to notice that the appellant no. 1 was armed with a lethal weapon like gupti and had inflicted blow on vital part of the body. The medical evidence on record would indicate that the deceased must not have been able to survive for long. It is not the case of the appellant that he had aimed blow at one part of person of the deceased and because of sudden intervention or movement of the deceased, the blow was struck below the right armpit. The evidence of witness Kanubhai would indicate that it was the intention of the appellant no. 1 to cause that very injury. The medical evidence establishes beyond any doubt that the injury was sufficient, in the ordinary course of nature, to cause death and therefore clause thirdly of Section 300 is attracted to the facts of the present case. In our view, the offence punishable would be one under Sec.

302 of I.P.C. and not one under Part I of Sec. 304 of I.P.C. as claimed by the appellants.

21. Coming to the acquittal appeal filed by the State, we find that the evidence on record does not establish in any manner that the appellants nos. 2 to 4 had shared the intention of the appellant no. 1 to cause the death of deceased Gordhanbhai. This aspect has been elaborately discussed by the learned Judge in para 52 of the impugned judgment with which we fully agree. There is no evidence on record which would show that any prior meeting of mind had taken place between all the appellants for injuring Gordhanbhai in the way it was done at the scene of offence. In fact, in the cross-examination of P.w. 3 Kanubhai, it has come on record that the appellant nos. 2 to 4 were hiding themselves behind the galla while appellant no. 1 had inflicted injury on vital part of the deceased. The prosecution has not established that the appellant nos. 2 to 4 had knowledge or were conversant with intention of appellant no. 1 to cause injury with his gupti on the vital part of the body of the deceased. On the totality of the facts and circumstances of the case, we are satisfied that the learned Judge did not commit any error in not convicting the appellants no. 2 to 4 under Sec. 302 with the aid of Sec. 34 of I.P.C. and the acquittal appeal is therefore liable to be dismissed.

22. For the foregoing reasons, we do not find any substance in both the appeals and both the appeals are liable to be dismissed. The appeals, therefore fail and are dismissed. The muddammal to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

23. The appellants nos. 2 to 4, who are on bail, are directed to surrender to the jail authorities on or before 31st July, 2001 failing which the authorities shall take them into custody so that they undergo the punishment inflicted by the learned Addl.Sessions Judge and confirmed by this Court.

(J.M.PANCAL, J.)

(SHARAD D DAVE, J.)

/srilatha/